

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PETER GERRY,

Plaintiff(s),

-against-

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC,

Defendant(s).
-----X

**ANSWER WITH
CROSS-CLAIM**

CIVIL ACTION
9545/07

The defendant, The Westchester Arc sued incorrectly as The Westchester Arc Foundation, Inc. for its answer to the complaint of the plaintiff, respectfully alleges:

1. Denies the allegations contained in paragraphs "FIFTH".
2. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "FIRST", "SECOND" and "FOURTH".
3. Admits the allegations contained in paragraphs "THIRD".

AS AND FOR THE FIRST CAUSE OF ACTION:

4. Answering the subdivision thereof numbered "SIXTH", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

5. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "SEVENTH", "EIGHTH", "NINTH", "TENTH", "ELEVENTH", "TWELFTH" and "THIRTEENTH".

AS AND FOR THE SECOND CAUSE OF ACTION:

6. Answering the subdivision thereof numbered "FOURTEENTH", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

7. Denies the allegations contained in paragraphs "FIFTEENTH", "SIXTEENTH", "SEVENTEENTH", "EIGHTEENTH" and "NINETEENTH".

**THE ANSWERING DEFENDANT,
The Westchester Arc
UPON INFORMATION AND BELIEF, ALLEGES
AS AND FOR A FIRST DEFENSE:**

The limitations of liability provided in Article 16 of the CPLR apply to this action and none of the exceptions set forth in §1602 apply to the plaintiff's claim(s).

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT,
The Westchester Arc
UPON INFORMATION AND BELIEF, ALLEGE(S):**

That if the plaintiff sustained any personal injuries or property damages, such injuries or damages were caused by their own negligence, wholly or partially, and without any negligence on the part of the answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

That the plaintiff herein was guilty of culpable conduct, including contributory negligence and comparative negligence, which said conduct bars plaintiff right of its recovery in proportion to which the said culpable conduct or negligence attributable to plaintiff bears the culpable conduct or negligence which caused the damages, if any, or the

occurrence complained of by plaintiff was caused in whole or in part by the assumption of risk of the plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

That any and all risks, hazards and dangers were open, obvious and apparent, natural and inherent and known or should have been known by the plaintiff herein and that the plaintiff assumed all such risks and hazards.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

While the answering defendant denies the plaintiff allegations of negligence and liability, any injury and damages, if proven, were the result of intervening and/or interceding acts of superseding negligence and liability on the part of parties over which this answering defendant neither has control nor has the right to control, and for which acts or omissions this answering defendant is not legally responsible.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

In the event the plaintiff recover a verdict or judgment against the answering defendant, then the verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as Insurance, Social Security, Workers' Compensation or employee benefit programs.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

The defendant did not have actual or constructive notice of any defect that allegedly

contributed to the accident alleged in the complaint.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

Provisions of C.P.L.R. Article 50-B apply to this action.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE:

The United States District Court lacks subject matter jurisdiction in this claim as it pertains to the answering defendant.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

The United States District Court does not leave pendent party jurisdiction in this claim as it pertains to the answering defendant.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

The United States District Court does not have ancillary jurisdiction in this claim as it pertains to the answering defendant.

JURY DEMAND

Defendant, The Westchester Arc, demands a trial by jury.

**AS AND FOR A CROSS COMPLAINT
OVER AND AGAINST THE CO-DEFENDANT,
Metro-North Commuter Railroad, and The Westchester Arc Foundation, Inc. ,
THE ANSWERING DEFENDANT,
The Westchester Arc,
ALLEGE UPON INFORMATION AND BELIEF:**

That if the plaintiff sustained damages as alleged in the Complaint through the negligence, breach of contract, breach of warranty, carelessness and/or strict liability of the defendant, then such damages were sustained due to the primary, active and sole fault of the defendant, as aforesaid, Metro-North Commuter Railroad, and The Westchester Arc, by reason of negligence, breach of contract, breach of warranty, carelessness and/or strict liability, and the fault, if any, of this answering defendant was secondary and passive only, and if the plaintiff should obtain and/or recover judgment against this answering defendant, then the defendant, as aforesaid, Metro-North Commuter Railroad, and The Westchester Arc, shall be liable over to this answering defendant for the full amount of said judgment or for any part hereof obtained and/or recovered on the basis of apportionment of responsibility for the alleged occurrence as found by the Court or jury.

WHEREFORE, the defendant, The Westchester Arc, demands judgment dismissing the complaint against it and further demands judgment over and against the defendant, as aforesaid, Metro-North Commuter Railroad, and The Westchester Arc, for the amount of any sums paid to the plaintiff over and against their proportionate share as determined by the apportionment of responsibility adjudged herein, together with costs and disbursements of this action and attorneys fees.

Dated: New York, New York
November 28, 2007

CALLAN, KOSTER, BRADY & BRENNAN, LLP

BY: 

WARREN S. KOSTER (6753)
A Member of the Firm

Attorneys for Defendant
The Westchester Arc
One Whitehall Street, 10th Floor
New York, New York 10004
(212) 248-8800
Our File No.: 400.143220

TO: Ira M. Maurer
Attorney(s) for Plaintiff(s)
1 Croton Point Avenue
Croton on Hudson, NY 10520
(914) 271-9474

TO: Metro-North Commuter Railroad
Pro Se
347 Madison Avenue
New York, NY 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PETER GERRY,

Plaintiff(s),

-against-

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC,

Defendant(s).
-----X

**DEMAND FOR MEDICAL
AUTHORIZATIONS AND
MEDICAL RECORDS**

CIVIL ACTION

9545/07

PLEASE TAKE NOTICE that pursuant to Rule 26 of the Federal Rules of Civil Procedure plaintiff or plaintiff attorney is required to serve upon the undersigned, within twenty (20) days after receipt of this notice, the following:

1. The names and addresses of all physicians or other health care providers of every description who have consulted, examined or treated the plaintiff for each of the conditions allegedly caused or exacerbated by the occurrence described in the Complaint, including the dates of such consultation, treatment or examination.

2. Duly executed and acknowledged written authorizations to allow the defendant to obtain the complete medical records relating to the plaintiff of each health-care provider identified in paragraph 1 above.

3. Copies of all medical reports received from health care providers identified in paragraph 1 above.

4. Duly executed and acknowledged written authorizations directed to any hospital, clinic or other health-care facility in which plaintiff is or was treated or confined due to the occurrence set forth in the complaint, so as to permit the securing of a copy of the entire hospital record, including x-rays, etc.

Upon your failure to comply herewith, the plaintiff herein will be precluded at the trial of this action from testifying to or offering any evidence of the conditions described in the reports or records demanded. Furthermore, failure to provide authorizations for medical records will result in the plaintiff being precluded at the trial of this action from offering any evidence or testimony about any part of the hospital records, medical records, x-ray or reports of any technicians etc. not made available to the defendant.

Dated: New York, New York
November 28, 2007

CALLAN, KOSTER, BRADY & BRENNAN, LLP

BY: 
WARREN S. KOSTER (6753)
A Member of the Firm

Attorneys for Defendant
The Westchester Arc
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PETER GERRY,

Plaintiff(s),

-against-

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC,

Defendant(s).
-----X

**NOTICE FOR DISCOVERY
AND INSPECTION OF
COLLATERAL SOURCES**

CIVIL ACTION

9545/07

S I R S:

PLEASE TAKE NOTICE, that pursuant to Rule 34 of the Federal Rules Civil Procedure a demand is hereby made upon the plaintiff or plaintiff attorneys to produce at the offices of the undersigned on January 11, 2008 at 10:00 a.m. the following:

The medical bills setting forth the total amounts claimed from the hospital, medical treatment, nursing and medical expenses incurred on behalf of the plaintiff. Further you are to identify what amounts, if any, have been paid by insurance, and thereafter identify said amounts setting forth the names, addresses and policy numbers of the carriers making said payments.

PLEASE TAKE FURTHER NOTICE, that failure on your part to respond to the above-requested material will result in this office making objection at the time of trial of this action to any items dealing with the above-requested documents.

Dated: New York, New York
November 28, 2007

CALLAN, KOSTER, BRADY & BRENNAN, LLP

BY: 

WARREN S. KOSTER (6753)

A Member of the Firm
Attorneys for Defendant
The Westchester Arc
One Whitehall Street, 10th Floor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PETER GERRY,

Plaintiff(s),

-against-

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC,

Defendant(s).
-----X

**DEMAND FOR MEDICAL
RECORDS**

CIVIL ACTION
9545/07

S I R S:

PLEASE TAKE NOTICE, pursuant to Rule 35 of the Federal Rules of Civil Procedure, the plaintiff or plaintiff attorneys are required to serve upon the undersigned, within twenty (20) days, the following:

Copies of the medical reports of those physicians who have treated or examined the plaintiff and who will testify on the plaintiff behalf. Same shall include a detailed written report setting out the examining physician's findings, including results of all tests made, diagnosis and conclusions, together with a statement of the injuries and conditions as to which testimony will be offered at the trial. Said reports shall also identify those x-rays, technicians' or medical reports, etc. which will be offered at the trial. All reports of earlier examinations of the same condition shall also be included.

Dated: New York, New York
November 28, 2007

CALLAN, KOSTER, BRADY & BRENNAN, LLP

BY: 

WARREN S. KOSTER (6753)
A Member of the Firm

Attorneys for Defendant
The Westchester Arc
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PETER GERRY,

Plaintiff(s),

-against-

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC,

Defendant(s).
-----X

**DEMAND FOR COPIES
OF STATEMENTS**

CIVIL ACTION
9545/07

PLEASE TAKE NOTICE that pursuant to Rule 26 of the Federal Rules of Civil Procedure, the plaintiff or plaintiff attorney are required to serve on CALLAN, KOSTER, BRADY & BRENNAN, LLP, attorneys for defendant(s), The Westchester Arc, within twenty (20) days the following:

1. Written statements of the defendant in the possession of the plaintiff or the attorney for the plaintiff; and
2. Records, memoranda, notes, tape recordings or other recorded communications of or by the defendant in possession of the plaintiff or the attorney for the plaintiff.
3. This demand shall be deemed to continue during the pendency of this action, if any of the above, items are subsequently obtained by plaintiff or plaintiff attorney.

Dated: New York, New York
November 28, 2007

CALLAN, KOSTER, BRADY & BRENNAN, LLP

BY: 

WARREN S. KOSTER (6753)

A Member of the Firm

Attorneys for Defendant

The Westchester Arc
One Whitehall Street, 10th Floor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PETER GERRY,

Plaintiff(s),

-against-

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC,

Defendant(s).
-----X

**DEMAND FOR WITNESS
INFORMATION**

CIVIL ACTION
9545/07

S I R S:

PLEASE TAKE NOTICE, pursuant to Rule 26 of the Federal Rules of Civil Procedure the plaintiff or her attorney is required within twenty (20) days to serve upon the undersigned:

1. The names and addresses of any and all actual witnesses to the alleged occurrence known by plaintiff or her counsel, either directly or through investigation.
2. The names and addresses of any and all witnesses known by the plaintiff or her counsel, either directly or through investigation, having knowledge of the conditions which are claimed as causing and/or contributing to the plaintiff' alleged injuries.
3. The names and addresses of any and all witnesses known by the plaintiff or her counsel, either directly or through investigation, to have knowledge concerning the defendant's notice of the relevant conditions prior to the plaintiff alleged injuries.
4. The names and addresses of any expert witnesses who have examined the plaintiff, including those who will be called at trial.
5. This demand shall be deemed to continue during the pendency of this action, if any witness' names and/or addresses are subsequently obtained.

PLEASE TAKE FURTHER NOTICE, that upon your failure to produce the aforesaid documents at the time and place required in this Demand and Notice, a motion will be made for appropriate relief to the court.

Dated: New York, New York
November 28, 2007

CALLAN, KOSTER, BRADY & BRENNAN, LLP

BY: 
WARREN S. KOSTER (6753)
A Member of the Firm

Attorneys for Defendant
The Westchester Arc
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PETER GERRY,

Plaintiff(s),

-against-

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC,

**NOTICE TO TAKE
DEPOSITION UPON
ORAL EXAMINATION**

CIVIL ACTION
9545/07

Defendant(s).
-----X

PLEASE TAKE NOTICE that the Examination Before Trial of plaintiff, PETER GERRY, and defendant, Metro-North Commuter Railroad, and The Westchester Arc, will be taken by the defendant, The Westchester Arc, pursuant to Rule 30 F.R. Civ. P. at:

Time and Date: January 11, 2008 10:00 a.m.,

Place: UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 Pearl Street
New York, New York 10007

PLEASE TAKE FURTHER NOTICE that each party then and there to be examined is required to produce all books, papers and other things in the possession, custody or control of such party to be marked as exhibits, and used on the examination.

Dated: New York, New York
November 28, 2007

**CALLAN, KOSTER, BRADY & BRENNAN,
LLP**

BY: 

WARREN S. KOSTER (6753)

A Member of the Firm

Attorneys for Defendant

The Westchester Arc

One Whitehall Street, 10th Floor

New York, New York 10004

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OUR FILE:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PETER GERRY,

Plaintiffs,

-against-

**FEDERAL RULES OF
CIVIL PROCEDURE
7.1 STATEMENT**

CIVIL ACTION
CASE NO.: CV-9545/07
(WSK)

METRO-NORTH COMMUTER RAILROAD,
and THE WESTCHESTER ARC FOUNDATION, INC.,

Defendants.
-----X

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and to enable judges and magistrates of the court to evaluate possible disqualification or recusal, the undersigned attorney of record for defendant certifies that the following are corporate parents, subsidiaries, or affiliates of that party:

NONE

Dated: New York, New York
November 28, 2007

LLP

CALLAN, KOSTER, BRADY & BRENNAN,

BY: 

WARREN S. KOSTER (WSK-6753)
A Member of the Firm
Attorneys for Defendant
The Westchester Arc
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